Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1972

THROUGH MARCH 31, 1972

VOLUME 146

WILLIAM J. BAXLEY, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From January 1, 1972

Through March 31, 1972

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1972, through March 31, 1972, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY
Attorney General

GEORGE L. BECK
Deputy Attorney General

E. RAY ACTON
Executive Assistant

WALTER S. TURNER
Chief Assistant Attorney General

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OPINIONS

January 19, 1972

Honorable Conrad M. Fowler
Shelby County Judge of Probate
Columbiana, Alabama 35051

Motor Vehicle Licenses—Motor Trucks—Act No. 1206.

Discussion of the applicability of certain of the exemptions or exceptions contained in Act No. 1206 of the 1971 Regular Session of the Alabama Legislature, approved September 17, 1971, amending Title 51, Section 697, As Amended, Code of Alabama 1940 (Recompiled 1958), relating to license tags for trucks.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office dated November 23, 1971, is as follows:

"(1) I shall appreciate your interpretation of 'carriers for compensation' as the phrase appears in Act No. 1206, Regular Session, 1971, Alabama Legislature, Section 1 (b) (2) (ii). Who are carriers for compensation?

"(2) Please advise the designation of commodities for which a 'C' tag is required as provided by the terms of the above Act.

"(3) The same statute provides that 'farm produce, farm products, and forest products' are exempt from the 'C' tag requirements. Please advise when, as a result of manufacturing or processing, farm products or forest products lose their nature as farm products and forest products to the extent that such exemption is no longer applicable and an 'X' tag, if otherwise appropriate, would be required; i.e., chickens are processed to packaged frozen chickens which are then processed into chicken pies; or logs are processed to lumber which is processed into furniture. Please advise the appropriate vehicle license tag for trucks of more than two axles to transport each product in each stage of processing, such transportation being for compensation or 'for hire.' "

1. It appears that the Legislature under the provisions of Subsection (b) of Section 1 of Act No. 1206 of the 1971 Regular Session of the Alabama Legislature, approved September 17, 1971, and which amends Title 51, Section 697, As Amended, supra, which provides for the various licenses required of motor trucks, has already pretty well answered your first question. Subsection (b) of Section 1 of Act No. 1206, supra, in effect, designates what is to be considered as a "carrier for compensation," as follows:

> "(b) For each truck or truck tractor, using the public highways of this state, (1) which has more than two axles when a single unit, or is used in combination with a trailer or semitrailer, and (2) which is either (i) used to transport goods, wares, merchandise or commodities of any kind or nature, for compensation of any kind, or (ii) operated under any rental, lease or other agreement, with carriers for compensation of goods, wares, merchandise or commodities, where compensation is charged under such rental, lease or other agreement, for the use of such truck or truck tractor . . . ."

"Carriers for compensation" are generally considered to be the same as so-called "for-hire carriers," that is, those operators who haul property or commodities over the highways of this State for compensation or for hire. Any carrier falling within such category and definition contained in the Act would be, for the purpose of this Act, a carrier for compensation or for hire, regardless of whether or not such carrier has qualified with the Public Service Commission as a for-hire carrier. Act No. 1206 is a separate and distinct Act from the Alabama Motor Carrier Act. It should, however, be pointed out that Act No. 1206 does contain some exemptions excluding the operators of certain vehicles which would normally fall within the for-hire category from procuring the so-called for-hire tag or "X" tag under certain stated conditions as are described under Subsections (a) and (b) of Section 1 of the Act.

2. In response to your second question, I wish to state that "C" tags or so-called "exempt commodity" license tags which are provided for under the third schedule contained in Section 1(b) are to be issued by you where the truck or truck trailer combination, as the case might be, is to haul for hire or for compensation exclusively "coal, iron ore, limestone, bauxite, sand, gravel, and commodities exempt under the Alabama Motor Carrier Act of 1939, as amended (or any one or more of the items listed in this paragraph), **except trucks used for the transportation of household goods, personal furniture, other household effects, farm produce, farm products, and forest products** . . ." Trucks or truck tractor combinations hauling household goods, personal furniture, other household effects, farm produce, farm products, and forest products, which have been emphasized and which come within said exception, can be licensed under Subsection (a) of Section 1, even though such trucks are used to haul said products for hire or for compensation.

3. My answer to your third question is that where "farm products" or "farm produce" or "forest products," are converted from their natural state to a manufactured product or undergo a metamorphosis or a substantial change in substance, they lose their identity as such products and their exemption under Subsections (a) and (b) of Section 1 of the Act, and vehicles transporting such products after same have been manufactured or converted into a different substance from their natural state would be required to carry the for-hire or "X" tag, if they are hauling for hire or for compensation.

Your question contained in the last sentence of your Question 3 has been answered under my answer to Question 2 and what has been said in my answer to your Question 3.

In conclusion, I wish to state that it is very difficult, if not impossible, to determine the correct license tag under Act No. 1206 for any particular vehicle, without having the specific facts concerning the operation of such vehicle.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 20, 1972

Honorable A. W. Steineker, Jr.
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama 36104

Costs & Fees—Fine—Forfeitures—Game and Fish—Inferior Courts—Penalties.

1. All fines derived from convictions for violation of game and fish laws must be distributed to the State Game & Fish Fund. Amendment 272, Constitution of Alabama.

2. Local law requiring payment of costs, fees, fines, forfeitures and penalties imposed in inferior court to county does not include those special items of cost or penalty required to be distributed to the State by general law. Section 105, Constitution of Alabama 1901.

Opinion by Assistant Attorney General Webb.

Dear Mr. Steineker:

I have your request of January 3, 1972 which reads as follows:

"Several local acts of the Legislature have been passed providing for distribution of fines, forfeitures and costs collected in inferior courts to the county. In this regard, please note as examples Section 15 of Act No. 891, Acts of Alabama 1969, page 1608; Section 9 of Act No. 2100, Regular Session 1971; and Section 7, Act No. 1861, Regular Session 1971.

"I request your opinion on the following questions:

"1. Should fines collected in game and fish cases be paid into the county under the provisions of the local acts cited above? In this regard, note also Amendment 272 to the Constitution of Alabama 1901.

"2. Should state penalties and items of cost such as the moving traffic violation penalty and peace officers retirement cost be paid into the county under the provisions of these local acts?"

Amendment 272 to the Constitution of Alabama creates the Game & Fish Fund composed in part of:

"c. All monies paid, derived, received or arising from fines, penalties and forfeitures pursuant to the game and fish laws of this state and the rules and regulations promulgated thereunder."

Act No. 891, Acts of Alabama 1969, page 1608, creates the Western District Court of Barbour County. Section 15 provides, in pertinent part, as follows:

"(d) In addition to the fines and forfeitures now provided by law to be paid into the general fund of Barbour County, Alabama, one-half (50%) of all other fines and forfeitures collected in this court are to be paid into the general fund of Barbour County, Alabama."

Act No. 1861, Regular Session 1971, creates the Inferior Court of St. Clair County and Section 7 of this act requires fifty percent of the fines and forfeitures collected in the court for the State to be retained and paid into the general fund of St. Clair County to help defray the cost of the operation of the court. Act No. 2100, Regular Session 1971, creates the Cleburne County Intermediate Court. Section 9 of this act requires the judge to make a report giving a full statement of all funds collected, including fines, forfeitures, penalties, fees and court costs and to deposit all funds so reported with the treasurer or depository of the county who shall place such funds in the general fund of the county. Exception is made in Section 10 for the payment of constable fees and witness fees to the officers serving the court.

Our courts have held on many occasions that all acts, if capable of a constitutional holding should be interpreted in such a manner as to give full import to the Constitution and at the same time uphold the statutes. If the statutes cited above are given a full liberal interpretation, such acts would clearly be in violation of Amendment 272 to the Constitution. I am, therefore, of the opinion that your first question should be answered in the negative and that fines and forfeitures collected in those courts on convictions for violations of the game and fish laws of this State should be paid into the State Game and Fish Fund.

Section 105 of the Constitution of Alabama 1901 provides that no local law shall be enacted ". . . in any case which is provided for by a general law. . . ." The moving traffic violation penalty referred to by you is imposed under the provisions of Title 36, Section 53(2), Code of Alabama 1940, Recompiled 1958, as amended. This act is a general law imposing an additional penalty of one dollar on all moving traffic violations to be paid into the State Driver Education Fund. The Peace Officer Retirement Fund is partially composed of special court costs imposed under the provisions of Title 55, Section 475(45), Code of Alabama 1940, Recompiled 1958, as amended by Act No. 1210, Regular Session 1971. This statute is also a general law and imposes court costs in the amount of one dollar for each moving traffic violation, five dollars for each misdemeanor, and ten dollars for each felony.

As previously stated, Act No. 2100, Regular Session 1971, is a local act creating Cleburne County Intermediate Court. Section 9 of this act requires all costs, fees, fines, forfeitures, and penalties assessed or imposed in the court to be reported by the judge and paid into the county treasury to be placed in the general fund of the county. A literal interpretation of this act would be in violation of Section 105 of the Constitution of Alabama 1901 and I am, therefore, of the opinion that such act should be interpreted in such a manner that the act would be constitutional. I, therefore, answer your second question in the negative. I am of the opinion that Section 9, supra, should be interpreted to require all costs, fees, fines, forfeitures, and penalties assessed or imposed in this court for which distribution is not otherwise provided for by general law shall be paid into the county treasury for the use and benefit of the general fund of the county. The general law requires the judge or the clerk of the court to distribute other costs, fees, fines and forfeitures in accordance with those statutes set forth. Cf. Quarterly Report of Attorney General, Volume 118, page 16.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 21, 1972

Honorable Hardie B. Kimbrough
District Attorney
First Judicial Circuit
c/o Clarke County Courthouse
Grove Hill, Alabama 36451

Officers & Offices—District Attorneys—Expenses—Funds—Traveling Expenses—Courts.

1. Membership in the National District Attorneys Association, secretarial assistance, subscription to legal periodicals relative to criminal law and procedure, payments to informers, telephone bills for District Attorney's office, and payments to the University of Alabama for Continuing Legal Education Programs for District Attorneys may be paid from a solicitor's fund.

2. Any amounts in excess of the travel expense allowance of District Attorneys for attending court within the circuit cannot be paid from a solicitor's fund.
3. Travel and subsistence expenses by a District Attorney for the investigation of criminal cases within his circuit may be paid from a solicitor's fund pursuant to Act No. 470, Acts of Alabama, Regular Session 1969, page 912.

Opinion by Assistant Attorney General Lawley.

Dear Sir:

This letter is in response to your letter dated November 8, 1971 which requested an opinion relative to Act No. 553, Acts of Alabama, Regular Session 1957, page 773, whereby a solicitor's fund was created for the District Attorney of the First Judicial Circuit. Specifically, you asked whether the following expenses could be paid by the District Attorney of the First Judicial Circuit for "law enforcement and in the proper discharge and conduct of the duties of his office, as he may see fit," pursuant to Act No. 553:

"1.) Membership in the National District Attorneys Association;

"2.) Mileage in privately owned vehicle incurred in the investigation of criminal cases in the First Judicial Circuit;

"3.) Subsistence incurred in the investigation of criminal cases in the First Judicial Circuit;

"4.) Secretarial assistance;

"5.) Subscription to legal periodicals relative to criminal law and procedure;

"6.) Mileage in privately owned vehicle incurred while attending court in counties within the First Judicial Circuit, other than in the home county of the District Attorney;

"7.) Subsistence incurred while attending court in counties within the First Judicial Circuit, other than in the home county of the District Attorney;

"8.) Payment to informers;

"9.) Telephone bills for District Attorney's office;

"10.) Payment to University of Alabama for Continuing Legal Education Program for District Attorneys."

Section 2 of Act No. 553, Acts of Alabama, supra, states that the District Attorney is "authorized and empowered to make requisition on the solicitor's fund for the payment of any and all expenses incurred by him for law enforcement and in the proper discharge and conduct of the duties of his office, as he may see fit, . . ." It is my opinion that the following items are reasonably related to the conduct of the duties of your office and are proper expenditures from your solicitor's fund for law enforcement. (See Quarterly Report of the Attorney General, Volume 88, page 17):

Membership in the National District Attorneys Association. See Opinion of this office dated December 28, 1970 to Honorable W. E. Hollingsworth, Jr.

Secretarial assistance.

Subscription to legal periodicals relative to criminal law and procedure.

Payments to informers.

Telephone bills for District Attorney's office. Title 13, Section 240, Code of Alabama 1940, Recompiled 1958, as amended, requires the State to furnish telephone service for District Attorneys, but the sum of money expended for this purpose is limited to the specific amounts appropriated by the Legislature. Any amounts in excess of this appropriation may be paid from a solicitor's fund. It is my understanding that some counties and some District Attorneys from their solicitor's fund do pay for the telephone service of the District Attorney's office and are subsequently reimbursed by the State. This practice is approved by this office.

Payments to the University of Alabama for Continuing Legal Education Programs for District Attorneys.

As to your questions pertaining to subsistence and mileage payments from the solicitor's fund for attending court in the First Judicial Circuit, it is my opinion that these expenses cannot be paid from your solicitor's fund. In an informal opinion of this office dated August 12, 1971 to Honorable A. W. Steineker, Jr., Chief Examiner of Public Accounts, it was held that a district attorney whose travel on official business takes him out of his circuit, but within the State, is subject to the fifteen-dollar maximum as set out in Act No. 470, Regular Session 1969, page 912. The excess over fifteen dollars a day could not be paid out of the solicitor's fund.

In an informal opinion of this office dated August 26, 1971 to Honorable D. L. Brock, Assistant Chief Examiner of Public Accounts, it was held that a district attorney whose travel in attending Grand Jury, arraignment, and criminal jury trials takes him out of his own county, but within his circuit, is limited to the travel expenses allowance of Title 13, Section 241, Code of Alabama 1940, Recompiled 1958, plus any other travel expense acts applying to that particular district attorney. Any amounts in excess of these travel expense allowances could not be paid from the solicitor's fund.

Title 13, Section 125(1b), Code of Alabama 1940, Recompiled 1958, as amended, provides a one hundred-dollar monthly allowance for expenses of the District Attorney of the First Judicial Circuit. I am of the opinion that you may not receive expenses above and beyond your travel expense allowances for attending court within your circuit from your solicitor's fund, since it is the purpose of the aforementioned expense allowances to reimburse you for expenses incurred while performing the ordinary duties of your office such as attending court. However, it is my opinion that when extraordinary duties are required of a district attorney, such as investigating criminal cases within his circuit, these expenses may be paid from his solicitor's fund. These expenses would be incurred while traveling in the service of the State and therefore the travel allowance should be paid pursuant to Act No. 470, Acts of Alabama, Regular Session 1969, page 912.

If I may be of any further assistance please contact me.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

February 10, 1972

Honorable John L. Moore
Judge of Probate
P. O. Box 7
Mobile, Alabama 36601

Elections—Probate Court—Voters—Board of Registrars—Records—Names.

1. The age of a voter is not a matter of public record.

2. If information regarding the birth date or age of a voter appears on the list of registered voters in the office of a Probate Judge, he should not allow this information to be copied for commercial purposes.

Opinion by Assistant Attorney General Hall.

Dear Judge Moore:

Your request for an official opinion dated December 17, 1971, is as follows:

> "The voting records of Mobile County are kept in bound books in a public place in the Probate Court office. The records, in addition to names, contain other information such as date of birth.
>
> "Recently, two persons in this County have requested permission of this office to set up lights and a camera and photograph or copy all of the voting records. They have indicated that when they assemble their list, they will institute a service that will offer this information for sale.
>
> "The law requires that the voting records be published as to names, wards and precincts every other year. The age of the person is never published and the law does not require this information.
>
> "As a service to the public and as a source of revenue to Mobile County, the Probate Court sells the voting list, or parts thereof, to various municipalities from time to time for election purposes, but no information as to age is given.
>
> "A copy of a page from our voting records is attached herewith for your information.
>
> "I concede that the name is part of the public records of my office but, my question is, is it your opinion that the age is also a part of the public records?
>
> "It is my feeling that a large portion of the general public would object to having information as to their age sold or distributed on a wholesale basis to various and sundry companies, agencies and corporations. Recently the sale of mailing lists has come under attack and it is my thinking that there may be a court decision on this point based on invasion of privacy."

In my opinion, the age of a voter is not a part of the public record.

Although the Board of Registrars must ascertain the age of each applicant for registration in order to determine whether he is eligible to be registered, this information is only required to appear on the application itself, and is not required on the list kept by the Board of Registrars or on the copy of the list returned to your office. Title 17, Sections 12, 31, and 32, Code of Alabama 1940 (Recompiled 1958), as amended. Also, see Title 17, Sections 38, 40, and 54, Code of Alabama 1940 (Recompiled 1958), as amended.

Since the lists of registered voters in your office are public records, you cannot prevent their being copied provided the persons doing so do not unduly interfere with normal and orderly operation of your office. However, since I hold that information about ages of voters is not a public record, I suggest that you either cover up that column or require that it be done prior to permitting such copies to be made.

I agree with you that there would be some question as to invasion of privacy involved. At least 35 states have decisions of the Courts or Statutes on this subject, although I can find none in Alabama to date.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

February 23, 1972

Honorable John Watkins
Executive Director
Alabama League of Municipalities
Post Office Box 1270
Montgomery, Alabama 36102

Elections—Holidays—Municipalities—Time.

July 5, 1972, is the last date on which a candidate may qualify in the 1972 general municipal elections held in cities and towns having a Mayor-Council form of government.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated February 8, 1972, is as follows:

"In behalf of the cities and towns of Alabama we respectfully request your opinion on the following question:

"Title 37, Section 34(25) of the Code of Alabama 1969 Pocket Parts provides 'The mayor shall cause to be printed on the ballots the name of any qualified elector who has by 5:00 p.m., on the first Tuesday in July preceding the date set for the election (the general municipal election for mayor council cities and towns), filed a statement of candidacy . . . .'. The first Tuesday in July of 1972 which is our general municipal election year, falls on July 4. Under these circumstances we need to know the last date when the mayor shall receive

statements of candidacy, in view of the fact that July 4 is a legal holiday.

"Your earliest attention to this request will be most appreciated because we are publishing a list of times and the dates by which municipal officials must perform their election functions and we want to make sure that we have this date correct."

General municipal elections are held in municipalities having a Mayor-Council form of government under the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama 1965, Regular Session, page 582.

Under the provisions of Section 6 of said statute, in order to become a candidate in a general municipal election, a person must properly qualify as such by 5:00 o'clock P. M. on the first Tuesday in July preceding the date set for the election whether the person is nominated by a political party or runs as an independent.

As pointed out by you, the first Tuesday of July, 1972, falls upon the Fourth of July, a legal holiday in this State. See Title 39, Section 184, Code of Alabama 1940, as amended by Act No. 1103, Acts of Alabama 1969, page 2040.

Section 1(b) of Act No. 663, supra, reads, in part, as follows:

". . . Whenever the last day on which an act may be done pursuant of this Act falls on a legal holiday as defined in Section 184 of Title 39, Code of Alabama 1940, or on a day on which the office in which the act must be done is authorized by law to be closed such act may be done on the next succeeding secular or working day."

Therefore, I am of the opinion that the Mayor of a municipality having a Mayor-Council form of government must print the names of all candidates on the ballots to be used in the 1972 general municipal elections if such candidates have properly qualified by 5:00 o'clock P. M. on July 5, 1972.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

February 28, 1972

Honorable Edward D. Robertson
Member, House of Representatives
P. O. Box 331
Northport, Alabama 35476

Justices of the Peace—Circuit Courts—Inferior Courts—Warrants—Judges.

1. The office of Justice of the Peace in Alabama was abolished January 27, 1972, and former Justices of the Peace have no authority to act as such thereafter.

2. Circuit Judges, County Court Judges, and Inferior Court Judges have authority to issue search warrants and such other warrants as are authorized by law.

Opinion by Assistant Attorney General Hall.

Dear Mr. Robertson:

Your request for an official opinion dated February 2, 1972, is as follows:

> "I would very much appreciate a ruling on the status of justices of the peace in the State of Alabama. I understand there are some in Tuscaloosa County who are still acting and performing duties they performed before they were abolished in the January 18, 1972, election.
>
> "I would also like an opinion on Circuit Judges, County Court Judges and Inferior Court Judges as to their writing warrants for search or any other type warrant, this request pertaining to Tuscaloosa County only."

The Constitutional Amendment abolishing the office of Justice of the Peace in Alabama which was voted on January 18, 1972, was proclaimed ratified January 27, 1972. Therefore, effective that date, the office of Justice of the Peace ceased to exist in Alabama, and former Justices of the Peace have no authority to act as such thereafter.

As to your second question, your attention is invited to several sections of the Code dealing with the matter of issuing search warrants and other types of warrants.

Title 15, Section 100, Code of Alabama 1940 (Recompiled 1958), provides as follows:

> "A search warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, or to any constable of the county, commanding him to search for personal property, and bring it before the magistrate."

Title 29, Section 211, Code of Alabama 1940 (Recompiled 1958), as amended, provides as follows:

> "The warrant may be issued by justices of the peace, judges of the county court, judges of any inferior court possessing the civil or criminal jurisdication of justices of the peace, by recorders or other municipal judges of towns or cities by what-

ever name called; and the word 'magistrate' hereinafter employed shall include each of the officers authorized to issue warrants.

"In all counties of this state having a population of not less than 28,000 nor more than 30,550 according to the 1960 or any subsequent federal decennial census, the clerk of any inferior court shall also have the right and authority to issue such warrants."

Title 29, Section 235, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"A search warrant may be issued by any judge of a circuit, or other like court of record possessing criminal jurisdiction, and on the return of the warrant, the same proceedings may be had before the judge sitting as a court, as are prescribed hereinabove for the trial before magistrates issuing said warrants. Any defendant to the warrant in such court of record may have a jury trial upon demanding the same at the time he files his verified answer and claim."

The latter two sections deal with searches for contraband liquors.

Title 15, Section 120, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"Upon a complaint being made to any one of the magistrates specified in section 399 of this title that such offense has, in the opinion of the complainant, been committed, the magistrate must examine the complainant, and such witnesses as he may propose, on oath, take their depositions in writing, and cause them to be subscribed by the person making them."

Title 15, Section 399, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"The judges of the appellate and circuit courts, and courts of like jurisdiction, throughout the state, the judges of probate, the judges of the county courts, judges of inferiors courts, and justices of the peace, in their respective counties; and the mayor or chief officer of any incorporated town or city, within the limits of their respective corporations, are magistrates within the meaning of this chapter, and authorized to require persons to give security to keep the peace in the manner provided in article 2 of this chapter."

Thus, it will be seen that Circuit Judges, County Court Judges, and Inferior Court Judges generally have the authority to issue all types of warrants. Specifically, as to Tuscaloosa County, Act No. 228, Local Acts 1927, Page 130, as amended by Act No. 415, Acts of 1949, Page 586, confers jurisdiction on the Inferior Court of Tuscaloosa County and the Judge thereof in certain criminal and civil cases, previously exercised

by the Justices of the Peace. This would include the issuance of warrants.

Act No. 2445, Regular Session 1971, provides for the creation in each county of a court of limited jurisdiction known as the Justice Court in those counties where the provisions of the Act are adopted by the governing body of such county. However, the provisions of the Act do not apply to Wilcox, Conecuh, and Monroe Counties. Such Justice Court of the county shall have and exercise the jurisdiction formerly exercised by Justices of the Peace. Since Justices of the Peace were authorized to issue warrants, the same authority would be conferred by the Act on the Judge of the Justice Court. In addition, Section 11 of the Act provides for special magistrates, with power to issue warrants between the hours of 6:00 O'clock, P.M., and 7:00 O'clock, A. M., each day of the week.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 1, 1972

Honorable G. William Noble
City Attorney, Gardendale, Alabama
Suite 912-923, City Federal Building
2026 Second Avenue, North
Birmingham, Alabama 35203

Bail—Bonds—Fines.

(1) A City Court may not establish a blanket policy of permitting bondsmen to pay the "normal fines" rather than the face amounts of their undertakings upon defendants' failing to appear to answer charges.

(2) A City Court may permit bondsmen to pay fines assessed against defendants for such defendants.

Opinion by Assistant Attorney General Marston.

Dear Mr. Noble:

Your letter of February 2, 1972, requested our formal opinion in answer to two questions. These were:

"1. May the City of Gardendale allow a bondsman to pay the normal fine for offense rather than cause a forfeiture to be entered for the face amount of a bond?

"2. Is there any authority or provision to allow the City of Gardendale to waive the collection of the face amount of the bond and substitute in lieu thereof the amount of a fine imposed but where the case has been continued for the payment of fine?"

We answer your first question in the negative (with explanation) and your second question in the affirmative.

Your first question asks whether, after a bondsman has entered bail for a party, such bondsman may be permitted, upon the party's failure to appear and answer the charges, to pay an amount equal to the usual fine for the offense in lieu of the full amount of the bail. The common law concept of bail contemplated the bondsman as the defendant's jailer during the pendency of the case. The bondsman could discharge his obligation only by presenting the accused in court to answer the charges. See **Cain v. State,** 55 Ala. 170 (1876). Under our present statutes a judgment nisi is issued upon the accused's failure to appear as set out in the undertaking or bond. Title 15, Sections 213-214, of the Code of Alabama 1940, Recompiled 1958. This judgment becomes absolute upon the bondsman's failure to justify the accused's failure to appear. A judgment absolute for an amount less than the undertaking is permitted if, in the judgment of the court, the circumstances partially justify the failure of the bondsman to present the accused in court. Prior to 1949, the bondsman could not be permitted to pay less than his original undertaking under any circumstances unless he presented the accused in court to answer the charges. See **State v. Esdale,** 35 Ala. App. 27, 45 So. 2d 861 (1949), Cert. Den. 253 Ala. 550, 45 So. 2d 865.

Our Legislature in its 1949 Regular Session, perhaps in response to the **Esdale** case, above, passed Act Number 569 (Page 896, Acts of Alabama, 1949). Under this Act, which is now codified as Title 15, Section 217(1), of the Code of Alabama 1940, Recompiled 1958, the bondsman may be permitted by the court to pay a portion of the undertaking if the circumstances of the default are such that it would be unjust to issue judgment for the full amount. However, we do not think that this statute would permit the blanket policy suggested by your first question. What is contemplated by this statute is a judicial determination of what would be just in each case.

Your second question could be restated in this manner: After an accused has been found and adjudged guilty of an offense and sentenced to pay a fine within a certain period, may the accused's bondsman pay that fine within that period? We see no practical objection to permitting this.

We hope that what has been said answers your questions.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 8, 1972

Mrs. Reed Proctor
Councilwoman
Office of the City Council
Birmingham, Alabama 35203

Voters — Registers — Registration — Residence — Elections — Constitutionality — Board of Registrars.

1. Persons 18 to 21 years of age may establish voting residency in locales different from those of parents or guardians.

2. University students may establish voting residence in university communities subject to no special restrictions.

3. Primary guideline for registering students is the 207th Amendment to Alabama Constitution of 1901 which requires one year's presence in the State of Alabama. Other guidelines are provided herein.

Opinion by Assistant Attorney General Caddell.

Dear Mrs. Proctor:

We are in receipt of your letter of recent date in which you request the opinion of this office on the following three questions:

"1. May a potential voter registrant between the ages of 18 and 21 years establish a residence for the purposes of voting registration in a locale different from the voting locale of his or her parents or guardian?

"2. In view of the changes brought about by the 26th Amendment to the United States Constitution, what is the proper interpretation of Title 17, Sections 17 and 28 of the Alabama Code? May a student of a college or university be allowed to register and vote in his university community?

"3. What guidelines should be followed by Registrars in the determination of whether a particular student of a university or other institution of learning should be registered to vote in the community in which he or she attends school?"

Before discussing each of these questions separately, I feel it is appropriate to point out some very recent developments in the law which have in large part determined the direction of this opinion.

A survey was recently conducted by the National Association of Attorneys General to determine how the state attorneys general had ruled upon the question of students voting in their university communities. Of the thirty-four state attorneys general who responded to the survey, twenty-five had ruled that the 26th Amendment to

the United States Constitution requires that college students be allowed to vote in their university communities with no special restrictions. The remaining nine of the thirty-four attorneys general had ruled that a strong presumption operates in favor of students voting only in the communities where their parents reside.

In three of the states where attorneys general ruled that such a presumption exists, the opinions were subsequently overruled by state and federal courts. This occurred with Attorney General's opinions in California, **Jolicoeur v. Milhaly,** 40 L. W. 2142, Cal. S. Ct., 1971); in Michigan, **Wilkens v. Bentley,** 40 L. W. 2143, Michigan S. Ct. (1971) and in Kentucky, **Bright v. Baesler,** Civil Action No. 2249, U.S.D.C. Eastern District of Kentucky (1971).

In the Michigan case a statute identical to Title 17, Section 17 of the Alabama Code was held unconstitutional by the Michigan Supreme Court. The court held a Michigan statute providing "no elector shall be deemed to have gained a residence . . . while a student at any institution of learning" to be in violation of the due process and equal protection clauses of the state and federal constitutions. The court concluded that this provision placed a burden on the right of students to vote and the state's alleged interest in preserving the purity of elections by ensuring that students would not vote twice, in promoting a concerned and interested electorate and its fear of the way students might vote did not individually or together constitute a compelling state interest.

In a very similar opinion, a federal court in Kentucky invalidated a Kentucky statute identical to Title 17, Section 17 of the Alabama Code. See **Bright v. Baesler,** supra. The reasoning of this case and been employed by a number of other federal courts which have ruled that students must be allowed to register and vote in their university communities subject to no special restrictions. See **Fair v. Osser,** Civil Action 71-2212 U.S.D.C. Eastern Pennsylvania (1971), and **Johnson v. Darrall,** Cause No. I. P. 71-C-543 U.S.D.C. Southern Indiana (1971).

From a study of these developments of law I have concluded that there is currently no alternative to a ruling that students be allowed to register and vote in their university communities.

QUESTION ONE

Traditionally, Alabama has followed the common law rule that the domicile of a minor child is the domicile of its father and cannot be changed without the consent of the father and the court. **Cleckley v. Cleckley,** 33 So. 2d 338, 250 Ala. 78. The question before us is what effect this common law rule will have upon minors in Alabama between the ages of eighteen and twenty-one who wish to establish residence for voting purposes in communities other than those in which their parents or guardians reside.

The 26th Amendment to the United States Constitution decrees:

> "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

If citizens under 21 years are prohibited from establishing a residence of their own for voting purposes while citizens over 21 are not, then, in a very real sense voting rights are being denied to those under 21 on account of their age. The clear language of the Amendment, together with its legislative history, indicates that this result would violate the letter and spirit of the Amendment. Senate Judiciary Committee, S. Rep. No. 92-96, 92nd Cong., 1st Sess. (Report accompanying S. J. Resolution (1971)). As further evidence of this intent, see Title III of the Voting Rights Act Amendments of 1970, especially Section 302 (42 U.S.C.A. Sec. 1973bb-1) and 42 U.S.C.A., Sec. 1971 (a) (2) (A).

The basis of the common law rule that a minor's residence is that of his parent or guardian, is the assumption that a minor is not **sui juris**, that is, does not possess full social and civil rights, and, therefore, is not capable of forming an intent for residency purposes. However, under the 26th Amendment, young adults are given the right to vote and are, therefore, **sui juris** for that purpose and must be considered to have the intent requisite for voting and for establishing a residence for voting purposes. The field of voting age requirements has been preempted from state control by the 26th Amendment and the case law regarding domicile of minors is changed as a matter of law to reflect the constitutional mandate of the 18-year-old vote.

QUESTION TWO

With respect to voting registration, Title 17, Section 28 of the Alabama Code provides that:

> "No person shall be registered except at the courthouse or in the precinct or ward where he or she resides."

Title 17, Section 17 of the Alabama Code provides that:

> "No person shall lose or acquire a residence either by temporary absence from his or her place of residence without the intention of remaining, or by being a student of an institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his or her place of residence in the civil or military service of the state, or the United States; neither shall any soldier, sailor or marine, in the military or naval service of the United States, acquire a residence by being stationed in this state."

In view of the fact that pursuant to the 26th Amendment practically all college students are now of voting age, the question presented here is

whether Title 17, Section 17 of the Alabama Code may be interpreted to preclude college students from establishing residence for voting purposes in their university communities. On its face, this section may appear to prohibit college students from registering to vote in their college communities since it appears to prohibit them from establishing residence in these communities. However, upon further analysis, it is clear that Title 17, Section 17, provides only that the **mere** fact of a person's status as a student of an institution of higher learning will not cause that person to lose or acquire a residence. The statute says this and no more. It does not say that the status of student of an institution of learning will negative other evidence of residence such as continuous physical presence in a community. Strictly interpreted, Section 17 provides that student status is irrelevant to the question of residence for voting purposes. This was the conclusion reached in a recent opinion of the Alabama Attorney General upon the impact of Title 17, Section 17, upon residence for voting purposes in university communities. Quarterly Report of the Attorney General, Volume 117, Page 20 at 21.

In a recent case interpreting Title 17, Section 17, although it was held that respondent had not established a residence in Tuscaloosa, Alabama, during his four-year-stay as a student, the holding was based in large part upon the fact that respondent had continued to vote in his home community in Geneva County. **Ex Parte Phillips,** 152 So. 2d 144, 275 Ala. 90, S. Ct. of Ala. 1963. The fact that respondent did not register and vote in Tuscaloosa was held to be an indication that he did not intend that community to be his domicile. This case strongly implies that the individual in question could have registered to vote in Tuscaloosa while he was a student there.

Regardless of how Alabama statutes and case law may be interpreted, there are a number of other considerations which provide a basis for registering students of voting age to vote in their university communities. The 26th Amendment to the United States Constitution clearly gives to individuals between the ages of 18 and 21, a full right to vote—the same right heretofore possessed by citizens who had reached the age of 21. To restrict the right of this age group to elect the government to which they are subject would violate the Equal Protection Clause of the 14th Amendment. Thus, the federal law respecting the right to vote must be applied to this newly enfranchised age group.

Time and again, the right to vote has been held to be a fundamental right. See **Gray v. Sanders,** 372 U. S. 368 (1963), **Harper v. Virginia State Board of Education,** 383 U. S. 663 (1966), **Baker v. Carr,** 369 U. S. 186 (1962) and **Reynolds v. Sims,** 377 U. S. 533 (1964). The courts have readily invalidated state restrictions upon the right to vote on the basis that such restrictions can be justified only by a "compelling state interest." **Kramer v. Union Free School District,** 395 U. S. 621 at 627 (1969); **Cipriano v. City of Houma,** 395 U. S. 701 (1969); **Burg v.**

Canifee, 315 F. Supp. 380 (D. Mass. 1970); **Kohn v. Davis,** 320 F. Supp. 246 (D. Vermont, 1970); and **Evans v. Cornman,** 398, U. S. 419 (1970).

In the landmark case of **Carrington v. Rash,** 380 U. S. 89 (1965), the Supreme Court spoke to the issue of selective voter registration thusly:

> "We deal here with matters close to the core of our constitutional system. The right . . . to choose that this Court has been so zealous to protect, means, at least, that the states may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State." (at 780.)

Following this guideline, the federal courts have firmly established the rule that the state, not the voter, has the burden of providing and demonstrating that the standards of the above cited cases have not been met. See **Hadnott v. Amos,** 394 U. S. 358 (1969) and **Gaston County v. United States,** 385 U. S. 285 (1969).

In the university communities of Alabama it is clear that the prevailing practice with respect to the registration of students has been the reverse of this rule. Students have been required to bear a very heavy burden of establishing that they are qualified to vote in these communities.

The traditional justifications for voter registration requirements are (1) promotion of a more intelligent vote by insuring that voters have at least had an opportunity to become knowledgeable about local affairs; (2) prevention of fraud; (3) identification of the voter; and (4) assurance of the voter's membership and interest in the community. **Dreuding v. Delvin,** 234 F. Supp. 721 (D. Md. 1964), Aff'd Mem. 380 U. S. 125 (1965); MacLeod and **Wilberding, State Voting Residency Requirements and Civil Rights,** 30 Geo. Wash. L. Rve. 93; Note, 77 Harv. L. Rev. 574 (1964).

The first three of the justifications for registration requirements described above would appear to be satisfied by the provisions of Amendment 207 to the Alabama Constitution and Title 17, Section 12 of the Alabama Code which require that prospective voters reside in the state for one year.[1] The only interest which might be furthered by a prohibition against students establishing a voting residence in their university communities is the fourth justification; namely, the assurance of the voter's membership and interest in the community. However, the holding of **Kramer v. Union Free School District,** supra at 632, indicates that such a prohibition, based upon this justification alone, would be overboard in its reach and thus would be readily invalidated by the federal courts.

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[1]Amendment 207 and Title 17, Section 12, originally required that a prospective elector also establish that he has resided in the county for 6 months and in the precinct or ward for 3 months immediately preceding the election. These requirements, however, were declared unconstitutional in the case of **Hadnott v. Amos,** U.S.D.C., Middle District Ala. N.D., 320 F. Supp. 107, 1970, at 114.

In view of these considerations of constitutional law, it must be concluded that neither the common law rule designating the residence of a minor as that of his parents or guardian nor Title 17, Section 17 of the Alabama Code may be interpreted or applied so as to prohibit students from registering to vote in their university communities.

QUESTION THREE

The third question presented is what guidelines should be followed by registrars in determining whether a particular student of a university or other institution of learning should be registered to vote in the community in which he or she attends school.

The only firm rule which the Attorney General can submit as a test of residency is the requirement of the 207th Amendment to the Alabama Constitution that the applicant must have resided in the State of Alabama for at least one year immediately preceding the election in which he offers to vote.

Once a person has met this durational residency requirement, a presumption of permanent residence attaches. When this presumption occurs, the Attorney General is of the opinion that the burden of proving the non-permanent nature of the potential voter registrant falls upon the person challenging the registrant's right to register and vote. In keeping with the constitutional standards described above, presence in a community as a student must be given the same consideration as presence in a community for work, retirement or any other purpose.

It should be noted at this point that the durational residency requirement of the 207th Amendment cannot be applied to federal elections because of the holding in **United States v. Arizona,** 91 S. Ct. 260 (1970). In that decision the Supreme Court invalidated all durational residency requirements affecting the right to vote in federal elections. However, the durational residency requirement for our state and local elections has not been invalidated as of this date. Thus, there seems to be no way to avoid a dual registration system in which out-of-state students are permitted to register only for purposes of federal elections until they have met the durational residency requirement of the 207th Amendment to the Alabama Constitution of 1901. Then they must be allowed to vote in state and local elections.

In the event that a registrar has reason to challenge a potential voter registrant's application in spite of the fact hat he appears to meet the requirements of the 207th Amendment, there are a number of criteria which may be employed to see if a sufficient residence has been established for voting purposes. It should be emphasized that the burden is upon the registrar to rebut the presumption of permanent residence created by the fact that a person has lived in Alabama for one year. In the event that a registrar assumes this burden, the following points of inquiry are suggested as guidelines. These tests are proposed in accord

with the case of **People v. Howle,** 227 Ala. 154, 149 So. 222 (1933), which held that a person's residence is a mixed question of law and fact dependent upon the intention and acts of the individual.

1. Does the applicant declare an intent to remain in the community for three months or more?[1]
2. Does the applicant declare an intent to abandon his former residency?
3. Are the bulk of the applicant's personal possessions located in the community?
4. Do the applicant's spouse and offspring live in the community?
5. Does the applicant own or rent living space in the community?

It should be stressed at this point that these are not proposed as special criteria for students but as an application of the general test of residency to the student situation. These are not all of the possible questions relevant to the voting residence of a college student. They are important factors, however, and, although no one of them should be considered conclusive, the total description they provide should allow a registrar to make a decision as to a potential registrant's application.

OUT-OF-STATE STUDENTS

With respect to out-of-state students a question will arise as to whether they will be required to continue to pay out-of-state tuition after they have met the one year durational residency requirement and are registred to vote in state and local elections. It is the opinion of the Attorney General that state universities may continnue to charge out-of-state tuition to these students in spite of the fact that they are registered to vote in Alabama.

The practice of charging out-of-state tuition is grounded in the fact that a student coming to a state school from another state has not paid Alabama taxes during his lifetime which would have gone to support state universities; nor have his parents paid taxes in Alabama. The fact that such student establishes a voting residence in Alabama will not negative this consideration and relieve the out-of-state student from paying special tuition fees. The constitutionality of out-of-state tuition charges has been established in **Kirk v. Bd. of Regents,** 78 Cal. Rptr. 260 (1969), appeal dismissed, 396 U. S. 554 (1970). There it was held that varying tuition charges of this sort did not touch on fundamental rights and, therefore, should not be actively reviewed by the courts.

[1]The student need not declare an intent to remain in the community permanently. A great many college students do not know where they will live permanently. However, this uncertainty on their part provides no basis for denying them the right to help elect the government to which they are subject from day to day.

SEVENTEEN YEAR OLDS

Another question may arise as to whether a seventeen year old who has met the requirements of Amendment 207 to the Alabama Constitution and who will turn eighteen very shortly before the next election may register while he is still seventeen. The answer to this question will be in the affirmative. In order not to deprive the eighteen year old of his constitutional right to vote one day or one week after he turns eighteen, it will be necessary to register some seventeen year olds in order to insure their right to vote when they reach voting age. In such instances, it may be advisable for the registrar to notify the election official at the polling place of the exact date on which the individual in question becomes eligible to vote.

SUMMARY

In answer to the questions posed:

1. Potential voter registrants between the ages of 18 and 21 may establish residency for the purposes of voting registration in locales different from their parents or guardians.

2. Title 17, Sections 17 and 28 of the Alabama Code may not be interpreted or applied so as to restrict the voting rights of 18 year olds, whether they be university students or not. University students may establish residency for voting purposes in their university communities.

3. The primary guideline to be followed in determining whether a particular student should be registered is the durational residency requirement of the 207th Amendment to the Alabama Constitution of 1901. If that requirement of one year's presence in Alabama is met, there is a presumption that the individual has established residence for voting purposes. If the registrar has reason to rebut that presumption, he should apply the criteria suggested in this opinion.

I trust that these answers have sufficiently met the questions you have raised. Should any additional problem develop, please feel free to call upon us at any time.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 14, 1972

Honorable O. Howard Moore
Tax Assessor Madison County
Madison County Courthouse
Huntsville, Alabama 35801

Taxation—Ad Valorem Taxes—Exemptions

Under Title 51, Code of Alabama 1940, Recompiled 1958, Section 2, as amended, exempting property from ad valorem taxation where used "exclusively . . . for purposes purely charitable;" exempts property of Presbyterian Apartments, Inc. under facts stated.

Opinion by Assistant Attorney General Payne.

Dear Mr. Moore:

This will acknowledge your letter of March 1, 1972, requesting opinion of this office which reads as follows:

"I have been requested by Reverend D. D. Wilkinson, Secretary of North Alabama Presbytery of the Presbyterian Church in the United States, to place certain real estate which will be purchased by Presbyterian Apartments, Inc., and upon which a highrise apartment will be constructed, on a tax exempt status.

"A copy of the Articles of Incorporation of Presbyterian Apartments, Inc., was left with me, as well as certain data supporting the request, as well as other pertinent facts, as to projected income of the undertaking, and this data indicates the following:

"1. Presbyterian Apartments, Inc., was incorporated in Madison County, Alabama, on September 30, 1970, under the provisions of the statutes relating to-non-profit corporations. It is a single purpose corporation to provide housing and related services at less than cost, limited to the low-moderate income elderly; that is, individuals and couples 62 years or over, having an annual income not in excess of maximum figures established by the U. S. Department of Housing and Urban Development.

"2. Presbyterian Apartments when completed will be a highrise of 161 bedroom apartments and 46 efficiency units. The building will be located on less than one acre of land.

"3. The charter of Presbyterian Apartments, Inc., provides that no part of the net earnings of the corporation shall be distributed or inure to the benefit of any member, director or official of the corporation, contributor or private individual. In the event of dissolution, wind-up or other liquidation of the assets of the corporation, its assets shall be distributed to non-profit and charitable corporations or institutions as shall qualify

for exemption under Section 501 (c) (3) of the Internal Revenue Code of 1954.

"4. Presbyterian Apartments, Inc., is governed by the Presbytery of North Alabama of the Presbyterian Church in the United States.

"5. The project will be financed through proceeds of a mortgage loan guaranteed and with an interest subsidy by the Federal Government pursuant to Section 236 of the National Housing Act.

"I know there are similar projects in various cities and counties in the State of Alabama which are tax exempt, either having been exempted by local assessors or by statute.

"I am convinced that Presbyterian Apartments, Inc., is a nonprofit religious corporation wholly managed and controlled by the North Alabama Presbytery of the Presbyterian Church in the United States, and that its contemplated use is for purposes purely charitable, and in my judgment the buildings to be erected and the land upon which they are to be situate to the extent of one acre should be exempt from the payment of ad valorem taxes within the meaning of Section 91 of the Constitution of Alabama.

"It is my understanding, however, that the Birmingham office of Housing and Urban Development will not accept my judgment but is requiring an opinion from the Attorney General of the State of Alabama as to the tax exempt status of this property, thus my request for your opinion."

I have given careful study to your letter as well as the accompanying letter from Honorable Charles E. Shaver of Lanier, Shaver & Herring, attorneys of Huntsville in connection with the request. Likewise, I have examined with care all of the attachments included with your letter, to wit: CERTIFICATE OF INCORPORATION OF PRESBYTERIAN APARTMENTS, INC., copies of letters of attorneys in Memphis, Tennessee, States of Louisiana and Mississippi; also copy of Regulatory Agreement For Nonprofit Mortgagors Under Section 236 Of The National Housing Act, As Amended. In addition, letter from Moulton, Allen and Williams, Realtors, Birmingham, Alabama, dated October 26, 1971, to Mr. Robert P. Renfrow from Mr. Tanner of the Project Mortgages Department relative to the Alabama Department of Revenue.

After due consideration of the various aspects involved in your request and after research upon the question of that which constitutes charitable use of property under Alabama law, it is my conclusion that the realty of Presbyterian Apartments is entitled to be exempted from ad valorem taxation.

Title 51, Code of Alabama 1940, Recompiled 1958, Section 2, as amended, in part provides:

> "The following property and persons shall be exempt from ad valorem taxation and none other: (a) . . .all property, real and personal, used exclusively . . . for purposes purely charitable; . . .."

We are here concerned with "lands" and the manner in which they are employed by Presbyterian. It is settled in Alabama that it is the use of property, not its ownership, that establishes the foundation for exemption from ad valorem taxes. **State v. Bridges,** 21 So. 2d 316, 246 Ala. 486. In cases involving charity and charitable uses of property, strict construction of applicable statutes is not necessarily followed; rather, the courts seem to bend their efforts toward ascertaining whether the uses involved in a given situation are within the "spirit" of the statute.

Article II of the Certificate of Incorporation, paragraph (a) in sum, states that the purpose for which Presbyterian became incorporated was to offer lower income elderly or handicapped families and persons on a nonprofit substantially below cost basis rental housing designed to meet the physical, social and physiological needs of the aged or handicapped, as to their health, security, happiness and usefulness in longer living. Sub-paragraph (b) of Article II states that the corporation is irrevocably dedicated to and operated exclusively for nonprofit purposes with no part of the income or assets to be distributed to, nor inure to the benefit of, any individual. Without prolonging unnecessarily this opinion I will make reference to only one case which I think representative of the factual situation here presented. That case is **District of Columbia v. Friendship House Ass'n, Inc.,** 198 F. 2d 530.

The question for consideration in the above case was whether Friendship's real property was exempt under the statute in question which exempted buildings which were "used for purposes of public charity" and the lands required for the use of such purposes. Briefly referring to the facts the Court related:

> "Respondent's sole activity is the **operation of a residential settlement house,** including classes and social activities for adults and children and day care of children. The moderate fees it charges for its services **are based on the individual's ability to pay."** (Emphasis added)

The facts in the case of Presbyterian Apartments are essentially the same as set forth above. After pointing out that the officers of Friendship House received no salary, the Court stated:

> "We think the Board of Tax Appeals was clearly right in finding that respondent's real property is exempt from taxation. Petitioner points out that most of respondent's beneficiaries are not

> impoverished. But as the Board said, 'It is not necessary, in order to qualify as a charity, that an organization **confine its activities to the furnishing of the bare necessities of life,** namely, "food, shelter and clothing." An activity is equally a charity when, as in the case of petitioner, **it affords some of the amenities of a decent life** to those who are unable to pay anything at all, or the full price thereof * * *' Cf. International Reform Federation v. District Unemployment Compensation Board, 76 U. S. App. D.C. 282, 284, 131 F.2d 337, 339." (Emphasis added)

The Court in pointing out the above ruling of the Board of Tax Appeals brought forth an impelling factor involving the human race—the **dignity** of man. Such a result is one of the finest of charitable involvement in assisting human beings to live in a manner befitting them. As I see it, this is precisely one end result in the proposed undertaking by Presbyterian Apartments as evidenced by the Certificate of Incorporation.

There is no profit motive or any indication whatsoever that anyone connected with Presbyterian Apartments is to benefit financially in this matter. It is indeed an unselfish undertaking on the part of the incorporators without any thought whatsoever as to personal gain. It has been said, "True charity is a desire to be useful to others without thought of recompense." This desire certainly seems to exist here.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

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INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, January 1, 1972, through March 31, 1972, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

Subject	Addressee	Date	File No.
	—A—		
ALABAMA FORESTRY COMMISSION			
Physical Plant—Appropriation	C. W. Moody	Mar. 10	Forestry
ALABAMA INSTITUTE FOR DEAF & BLIND			
Attorney Fee—Regular Appropriation	W. W. Elliott	Feb. 11	Inst. Deaf & Blind
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